

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

DAVID COLSON,

Plaintiff,

v.

COMMISSIONER of Social Security,

Defendant.

Case No. 3:11-cv-6119-ST

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Janice M. Stewart issued Findings and Recommendation in this case on August 8, 2014. Dkt. 33. Judge Stewart recommended that Plaintiff's unopposed motion for attorney's fees pursuant to 42 U.S.C. § 406(b) be granted. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1)(C). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report[.]”); *United States. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (the court must review de novo magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Stewart’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Stewart’s Findings and Recommendation, Dkt. 33. Plaintiff’s Unopposed Motion for Attorney Fees under 42 USC §406(b) (Dkt. 27) is GRANTED. Plaintiff’s counsel is entitled to \$6,3251.50 in § 406(b) fees, representing approximately 13 percent of Plaintiff’s retroactive benefits recovery. The Commissioner is directed to issue the section 406(b) check for payment to Plaintiff’s attorney, less any applicable administrative assessment as allowed by statute. Any remaining sums withheld by the Commissioner from Plaintiff’s benefits shall be paid to Plaintiff.

IT IS SO ORDERED.

DATED this 29th day of August, 2014.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge